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StarEnterprise

J Samuel Listiak
Special Counsel



12700 Northborough Drive
Houston TX 77067

August 19, 1993

Ms. Katherine A. Lose (3HW42)
Remedial Project Manager
EPA Region III
841 Chestnut Building
Philadelphia, PA 19107

**RE: Standard Chlorine Superfund Site
Delaware City, Delaware**

Dear Ms. Lose:

The following concerns your July 21st letter to Mr. L. A. Wilkes of Star Enterprise concerning the above site.

According to the description in your letter, Standard Chlorine had a release of two chlorinated benzene in 1986, and allegedly some of the contamination has spread to property which is presently owned by Star Enterprise. Standard Chlorine is, of course, unrelated to Star Enterprise and your letter does not suggest that it is, nor that somehow the release occurred in connection with any relationship between Star Enterprise and Standard Chlorine. Moreover, the release in question allegedly occurred in 1986, several years before Star Enterprise was formed. Under these conditions, any claim that the EPA might have against Star in connection with this matter would be prevented by the third party defense in Section 107(b)(3) of Superfund. Even if Star has been the victim of the Standard Chlorine release, EPA cannot "blame the victim for being victimized". (Kelley v. Thomas Solvent Company, 727 F. Supp. 1532 (U.S.D.C. W.D.Mich. 1989)). Further, any money which Star might expend in connection with this matter would ultimately either be reimbursed by the U.S. Government under Section 106(b)(2)(A) or Section 111(a)(2) of Superfund, or by Standard Chlorine itself under Section 113(f)(1) or the common-law. In fact, if the EPA pursued Star Enterprise as an alleged PRP in connection with this site, Star's best course of action might be to file a declaratory judgment action against Standard Chlorine. Since there can be no doubt but that such an

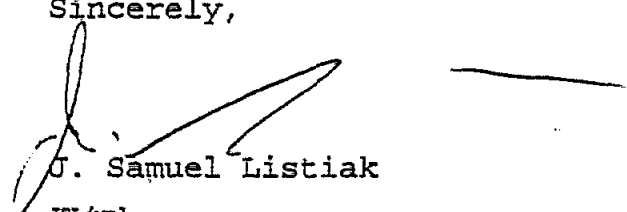
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action would be successful under the allegations outlined in your correspondence, this means that ultimately the response costs will be borne by Standard Chlorine and/or the Superfund, while additional transaction costs would be incurred by Star, EPA, and Standard Chlorine. It would seem to be far more efficient to simply pursue Standard Chlorine, as I assume the EPA intends to, rather than also pursue parties who will ultimately pass responsibility back to Standard Chlorine or the Superfund itself.

Sincerely,



J. Samuel Listiak

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cc: Sarah Keating, Esq.
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